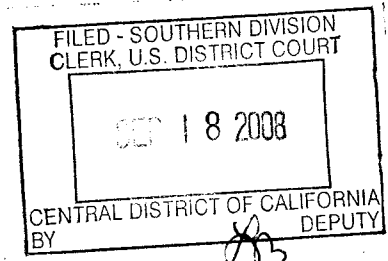


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KEITH RIELLY, an individual,
Plaintiff,
vs.
D.R. HORTON, INC., a Delaware
Corporation,
Defendant.

Case No. SACV06-867 AG (ANx)
[Assigned to the Hon. Andrew J. Guilford]

[PROPOSED] JUDGMENT

DATE: October 1, 2007
TIME: 10:00 a.m.
PLACE: Ctrm. 10D, Santa Ana

[Concurrently Filed with Notice of Motion and Motion, Memorandum of Points and Authorities, Statement of Uncontroverted Facts, Declarations of Tom Noon and Jack S. Sholkoff, Request for Judicial Notice, Compendium of Non-Federal Authorities, and [Proposed] Order]

Action Filed: September 14, 2006
Trial Date: November 13, 2007

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1 Defendant D.R. Horton, Inc.'s ("Defendant") Motion for Summary Judgment,
2 or Alternatively, Summary Adjudication of Issues, came on regularly for hearing on
3 October 1, 2007. Having reviewed the papers submitted by the parties, and upon
4 **GOOD CAUSE SHOWN**, the Court hereby **GRANTS** Motion for Summary
5 Judgment in Favor of Defendant as follows:

6 **ISSUE 1:** Judgment should be entered in D.R. Horton's favor on Plaintiff's
7 First Claim for Relief for violation of the Labor Code based on D.R. Horton's
8 alleged failure to pay plaintiff a bonus for fiscal year 2005 because plaintiff did not
9 have a legal entitlement to receive bonus compensation from D.R. Horton.

10 **ISSUE 2:** Judgment should be entered in D.R. Horton's favor on plaintiff's
11 Second Claim for Relief pursuant to Business & Professions Code §§ 17200, et seq.,
12 based on D.R. Horton's alleged failure to pay plaintiff a bonus for fiscal year 2005
13 because plaintiff did not have a legal entitlement to receive bonus compensation
14 from D.R. Horton.

15 **ISSUE 3:** Judgment should be entered in D.R. Horton's favor on plaintiff's
16 Third Claim for Relief for wrongful termination in violation of public policy based
17 on D.R. Horton's alleged termination of plaintiff's employment to avoid paying him
18 a bonus, because plaintiff did not have a legal entitlement to receive bonus
19 compensation from D.R. Horton; and, D.R. Horton terminated plaintiff for good
20 cause and not for an illegal reason.

21 **ISSUE 4:** Judgment should be entered in D.R. Horton's favor on plaintiff's
22 Fourth Claim for Relief for wrongful termination in breach of public policy because
23 plaintiff cannot establish a prima facie case that D.R. Horton terminated his
24 employment in violation of the Sarbanes Oxley Act of 2002 because he can offer no
25 evidence of a causal nexus between his alleged protected activity and his
26 termination; and, because D.R. Horton can demonstrate that it terminated plaintiff
27 for a legitimate and non-retaliatory reason: his poor job performance.
28


1 **ISSUE 5:** Judgment should be entered in Defendant's favor on plaintiff's
2 Sixth Claim for Relief for breach of an implied contract only to be terminated for
3 cause because Plaintiff was employed "at-will" and because D.R. Horton can
4 demonstrate that it terminated plaintiff for a legitimate reason: his poor job
5 performance.

6 After considering the moving and opposition papers, arguments of
7 counsel, and all other matters presented to the Court,

8 **IT IS ORDERED AND ADJUDGED THAT** said Motion for
9 Summary Judgment, or Alternatively, Partial Summary Judgment of Issues is
10 GRANTED.

11 **IT IS FURTHER ORDERED AND ADJUDGED THAT** the Plaintiff
12 take nothing, that the action be dismissed on the merits and that Defendant D.R.
13 Horton, Inc. recover its costs in the amount of _____ and attorneys fees to
14 be determined by the Court.

15
16 DATED: SEPT 17, 2008


Hon. Andrew J. Guilford
United States District Judge

17
18
19 Respectfully submitted,

20 JACK S. SHOLKOFF, State Bar No. 145097

21 jack.sholkoff@ogletreedeakins.com

22 DAVID A. GARCIA, State Bar No. 218356

23 david.garcia@ogletreedeakins.com

24 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

25 By: 

26 Jack S. Sholkoff
Attorneys for Defendant
D.R. HORTON, INC.

CERTIFICATE OF SERVICE BY MESSENGER SERVICE

(A DECLARATION BY THE MESSENGER MUST ACCOMPANY THIS PROOF OF SERVICE)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to this action. My business address is First Legal Support, 1511 West Beverly Blvd., Los Angeles, California 90026.

On September 10, 2007, I served the following document(s) described as:

[PROPOSED] JUDGMENT

by placing the documents in a sealed envelope addressed to the persons at the addresses below:

Mark N. Mazda, Esq.
Mark J. Butler, Esq.
Mazda Butler LLP
2040 Main Street, 9th Floor
Irvine, CA 92614

Personal – Office
Service

and providing them to a professional messenger service for service.*

- ☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on September 10, 2007, at Los Angeles, California.

Jovi FAAMALIGI
Type Name

Jovi FaamaliGi
Signature

* (A DECLARATION BY THE MESSENGER MUST ACCOMPANY THIS PROOF OF SERVICE)

DECLARATION OF MESSENGER

I personally delivered the envelope or package, received from the declarant attached, to the persons at the addresses listed.

(1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office.

(2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on September 10, 2007.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on September 10, 2007, at Los Angeles, California.

EDY GARRIDO
Name of Messenger

Eg
Signature of Messenger

First Legal Support

(Name of Messenger Service)